

FRANK DE JONG

IBLA 76-613

Decided August 30, 1976

Appeal from decision of the Montana State Office, Bureau of Land Management, disqualifying simultaneous oil and gas lease offers M-33837 and M-33871.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Rentals

When an oil and gas lease offeror whose entry card was drawn first in a simultaneous drawing fails to pay the rental within 15 days after receiving notice that payment is due, he is automatically disqualified under 43 CFR 3112.4-1 from receiving the lease.

APPEARANCES: Frank De Jong, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Frank De Jong appeals from the decision dated May 4, 1976, of the Montana State Office, Bureau of Land Management (BLM), disqualifying him from receiving oil and gas leases M-33837 and M-33871. Appellant's entry cards had been drawn first in the simultaneous drawings held for the leases in March 1976. Appellant received notices on April 7, 1976, that the rental payment for each lease was due within 15 days of receipt of the notice. In its decision, BLM informed appellant that his rental payments were not received until April 26, 1976. BLM then held that because the rental payments were received more than 15 days after appellant received the notices of rental due, appellant was automatically disqualified from receiving the leases.

Appellant argues that when he mailed the checks to BLM he allowed sufficient time for their arrival within the 15-day period. As evidence of this, he has submitted copies of the checks dated "April 15, 1976." He concludes that any delay

in the arrival of the checks at BLM is probably the fault of the U.S. Postal Service and that he acted in good faith at all times.

[1] Regulation 43 CFR 3112.4-1, concerning submission of the first annual rental payment after a simultaneous oil and gas lease drawing, is clear and unambiguous:

* * * Rental must be received in the proper office of the Bureau of Land Management within fifteen (15) days from the date of receipt of notice that such payment is due. The drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease, and consideration will be given to the entry of the drawee having the next highest priority in the drawing.

Unlike the statute and regulations governing reinstatement of a terminated oil and gas lease, 43 CFR 3112.4-1 leaves no room for excuse -- it is mandatory that the rental payment must arrive at the proper BLM office within 15 days. W. Duane Kennedy, 24 IBLA 152 (1976); John Paul Pratt, 24 IBLA 110 (1976); Mar-Win Development Co., 20 IBLA 383 (1975); Robert D. Nininger, 16 IBLA 200 (1974), *aff'd*, Nininger v. Morton, Civ. No. 74-1246 (D.D.C., March 25, 1975). Cf. 30 U.S.C. § 188 (1970); 43 CFR 3108.2-1. Moreover, the Board has specifically rejected the argument that late payment of the rental should be excused when the delay was caused by the Postal Service. John Paul Pratt, *supra*; Mar-Win Development Co., *supra*. Therefore, the BLM State Office correctly disqualified appellant from receiving the leases.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

